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85-1357

Supreme Court, U.S.
FILED
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JOSEPH F. SPANIOL, JR.
CLERK

CASE NO. _____

SUPREME COURT OF THE UNITED STATES

OCTOBER, 1985 TERM

MICHAEL BRAUER,
PETITIONER,

VS.

THE PEOPLE OF THE STATE OF COLORADO,
RESPONDENT.

ON WRIT OF CERTIORARI TO THE
SUPREME COURT, STATE OF COLORADO

PETITION

MICHAEL BRAUER
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OF THE UNITED STATES

14 pp

STATEMENT OF QUESTIONS

The "penalties" referred to in the paragraphs, below, refer to 1) the initiation of the "disability proceeding" by the State of Colorado (hereafter "State") as an "Original Proceeding In Disability" before the Colorado Supreme Court; and, 2) the Orders requiring Petitioner to submit to an examination by a psychiatrist; and, 3) the Order transferring Petitioner to "disability inactive status" (in effect, the suspension of Petitioner's license to practice law).

1. Does the Free Exercise Clause of the First Amendment to the Constitution of the United States (hereafter "Constitution") prohibit the State from imposing penalties on an attorney when the only grounds for such penalties consist of letters written by the attorney expressing his religious beliefs and opinions?

2. Does the Establishment Clause of

the First Amendment to the Constitution forbid the State from coercing an attorney into the practice of a conforming religion and/or religions tacitly approved by the justices of the State Court by imposing penalties on the attorney when the only grounds for such penalties consist of letters written by the attorney expressing his non-conforming religious beliefs and opinions?

3. Does the Free Speech Clause and the Right to Petition Clause of the First Amendment to the Constitution forbid the State from imposing penalties on an attorney when the only grounds for such penalties consist of letters written by the attorney expressing his religious and political beliefs and opinions?

4. Do the First Amendment Freedoms of the Constitution forbid the State from invading an attorney's Right to Privacy

by ordering the attorney to submit to a psychiatric examination when the only grounds for such Order consist of letters written by the attorney expressing his religious and political beliefs and opinions?

5. Is an attorney denied Due Process of law as guaranteed by the Fifth Amendment and Section 1 of the Fourteenth Amendment to the Constitution as a result of the following:

a) the evidence does not rationally support the penalties when the evidence consists of the attorney's expressions of his religious and political beliefs and opinions; and/or,

b) the evidence does not rationally satisfy the Constitutionally required burden of proof and the State's own promulgated burden of proof (i.e., "clear and convincing"); and/or,

c) the state court never acquired

jurisdiction over the attorney because the evidence does not rationally provide probable cause or any grounds whatsoever for initiation of the "disability proceeding"; and/or,

d) the State's allegations of facts as contained in the "Petitions" and various "'Responses'" are vague and conclusory; and/or,

e) the allegations do not support the State's cause of action because they consist of hearsay; and/or,

f) the repetition of "allegations" consisting of merely inflammatory innuendoes were highly prejudicial and wrongly influenced the State Court's opinion of the attorney's mental state; and/or,

g) other violations of procedural and substantive Due Process (which are fairly included within objections and/or defenses raised by the attorney)?

6. Is an attorney denied Due Process of law as guaranteed by the Fifth Amendment and Section 1 of the Fourteenth Amendment to the Constitution as the result of the reversal of the burden of proof?

7. Does the State Court's abdication of its judicial functions and substitution of the opinion of a single psychiatrist in the place of such functions in a "disability proceeding" constitute, in effect, a "one man jury" or "one man inquisition" in violation of the Impartial Jury Clause of the Sixth Amendment, the Seventh Amendment and the Due Process Clause of the Fifth Amendment and Section 1 of the Fourteenth Amendment to the U.S. Constitution?

8. Is an attorney denied Equal Protection of the law when the State denies the attorney important protections guaranteed by the First Amendment

Freedoms and the Due Process Clause as guaranteed by the Fifth Amendment and Section 1 of the Fourteenth Amendment to the Constitution and similar protections guaranteed by the Constitution of the State of Colorado and protections provided by state and federal laws by imposing penalties on the attorney because the attorney wrote letters expressing his religious and political beliefs and opinions?

9. The Moot Orders of the State Court are appropriate for review under the doctrine of issues capable of repetition, yet evading review.

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No opinion was rendered by the Colorado Supreme Court. No finding of facts was rendered by said Court except brief, flat, conclusory statements.

JURISDICTION

Judgments Sought To Be Reviewed

Petitioner requests the Supreme Court of the United States (hereafter "the Court") to review the Order rendered by the Supreme Court, State of Colorado, (hereafter "State Court"), transferring attorney-Petitioner to "disability inactive status," dated November 7, 1985, entered November 8, 1985.

Furthermore, Petitioner requests the Court to review the following additional Orders of the State Court:

1. The Order dated August 29, 1985, entered August 30, 1985 requiring Petitioner to "submit to a medical examination by Dr. Frederick M. Miller [a psychiatrist] ... on or before September 30, 1985."

2. The Order dated October 11, 1985, entered October 15, 1985 "transferring" Petitioner to "disability inactive status without further hearing," effective October 31, 1985, unless Petitioner submits to a psychiatric examination by Dr. Miller on or before October 31, 1985.

Orders Respecting Rehearing

In Orders dated October 3, 1985 (entered October 4, 1985) and November 13, 1985 (entered November 14, 1985), respectively, the State Court denied Petitioner's Motions For Reconsideration

of the Order and Judgment, dated September 30 and November 8, 1985.

Federal Statute Conferring Jurisdiction

The Federal statute which confers jurisdiction on the Court is 28 U.S.C. 1257(3).

The Federal statute which sets the time limits within which a Petition for Writ of Certiorari must be filed is 28 U.S.C. 2101(c).

CONSTITUTIONAL PROVISIONS AND FEDERAL LAW

1. The Free Exercise Clause, Establishment Clause, Free Speech Clause and Right to Petition Clause of the First Amendment to the U.S. Constitution.

2. The Due Process Clause of the Fifth Amendment and Section 1 of the Fourteenth Amendment to the U.S. Constitution.

3. The Impartial Jury Clause of the Sixth Amendment to the Constitution.

4. The Seventh Amendment to the U.S.

Constitution.

5. The Equal Protection Clause of Section 1 of the Fourteenth Amendment to the U.S. Constitution.

6. 42 U.S.C. 1983.

7. 5 U.S.C. 552(a);(b)(7)(B);(b)(7)(C) and 5 U.S.C. 552a(b).

See Appendix.

STATEMENT OF FACTS

Petitioner, Michael Brauer, passed the Bar exam and was admitted to the practice of law in Colorado by the Supreme Court, State of Colorado, on May 19, 1975. Petitioner also has been a member of the Bar of the Supreme Court of the United States since September 1, 1978.

Petitioner is representing himself in this appeal.

While there is an organization named the "Colorado Bar Association" such association is social in nature and takes no part in regulating the practice of law

in Colorado. This is done by the Colorado Supreme Court itself, which body regulates by promulgating court rules. C.R.C.P. 241.1. The State Court has established by rule two types of proceedings by which to examine an attorney's conduct in the practice of law. One is the "disciplinary proceeding" in which alleged violations of the Code of Professional Responsibility are examined. C.R.C.P. 241.1 et. seq. The other is the "disability proceeding" in which allegations of incompetency to practice law because of mental illness are examined. C.R.C.P. 241.19. The case at bar involves the latter type of proceeding. In Petitioner's view many of the provisions which apply to disciplinary proceeding also apply to disability proceedings. C.R.C.P. 241.1 et. seq.

The "Disciplinary Prosecutor," an

attorney appointed by the State Supreme Court, is supposed to prosecute disciplinary and disability actions. C.R.C.P. 241.4(c)(3). The "Committee Counsel," an attorney appointed by the State Supreme Court, is supposed to "cooperate" with the Disciplinary Prosecutor. C.R.C.P. 241.3(c)(5).

The case at bar does not involve the practice of law. It involves several letters written privately by Petitioner to government officials.*

As early as May 25, 1983, Petitioner wrote letters to President Ronald Reagan and received responses from the White

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* While Petitioner's private letter to Judge Moore and Petitioner's private letters to two religious leaders (Bishop James O. Mote and Bishop William Frey) were made part of Respondent's "Petition" (see Respondent's "Petition," dated May 20, 1985 and "Supplement to Petition," dated May 22, 1985 and Exhibits thereto) an examination of Respondent's pleadings reveal that the principal focus of Respondent's cause of action seems to involve (Petitioner is not sure) Petitioner's letters to President Reagan. Furthermore, the Constitutional and legal issues presented by these letters are very similar to the issues presented by the letter to President Reagan. Therefore, unless the Court wishes more discussion in detail on the Constitutional and legal issues presented by the letters to Judge Moore, Bishop James O. Mote and Bishop William Frey Petitioner will discuss primarily the Constitutional and legal issues presented by the letter to President Reagan, with the confidence that the issues presented by the other letters are fairly included.

House. These letters and the responses thereto do not appear in the Record. They are, however, mentioned in one of Petitioner's letters which does appear in the Record. See Respondent's Exhibits, letter to Reagan/Herrington, dated Novembe: 23, 1984.

Petitioner's letters, for the most part, expressed Petitioner's religious beliefs and opinions, and to a greatly lesser extent, expressed certain of Petitioner's political beliefs and opinions. Petitioner obtained the answers to legitimate questions that the public servants refused to respond to and resolved a dilemma President Reagan surely faced by commanding the latter to appoint Petitioner to the Supreme Court of the United States, should a vacancy occur. Petitioner also made Spiritual predictions concerning orange trees in Florida and other disasters. See

Respondent's Exhibits, letter to Reagan/Herrington, dated November 23, 1984. Petitioner stated his religious credentials. See Respondent's Exhibits, letters to Reagan/Herrington, dated November 14 and December 21, 1984 sent with cover letter to Reagan/Herrington, dated December 21, 1984. An article appeared in the Denver Post on February 13, 1985 extolling the virtues but not reviewing the liabilities of prospective nominees to the United States Tenth Circuit Court of Appeals. Petitioner also stated his concern that persons representative of certain political interest groups are being appointed, under cover of relative secrecy, to positions of higher and higher authority in the federal government. Petitioner also supplied information within his knowledge. The letters expressing these concerns and containing this information

was sent to a limited number of appropriate public officials. Respondent's Exhibits, letters to Reagan/Buchanan dated February 27, 1985.

It is obvious from the letters that Petitioner believed that it was important for the country that these religious views be communicated to appropriate government officials. In the absence of a comprehensible response to Petitioner's letters his language becomes more forceful. It can be gathered from the letters that the letters themselves were necessary and forceful language was necessary for at least two reasons. First, welcome or not, the letters are historical documents that when given certain information, predictions and warnings on a certain date certain responsible political leaders took this or that action. Second, there is a danger that bland language will be

ignored -- not because the intended reader would not be interested in the message -- but because the intended reader fails to grasp the importance of the message.

Therefore, Petitioner repeated his spiritual prophecies, religious beliefs and (to a greatly lesser extent) political concerns. Respondent's Exhibits, letters to Reagan/Buchanan, dated March 18, March 29, April 3, and May 8, 1985.

Receiving no comprehensible response from the public servants of either the Executive Branch or the Legislative Branch, Petitioner wrote a personal and confidential letter to John P. Moore, Chief Federal District Judge (hereafter "Judge Moore"), dated May 16, 1985. See Respondent's Exhibits. Petitioner worked for Judge Moore before he became a Judge when he was Colorado Attorney General, and knew him personally. Respondent's

Exhibits, letter to Reagan/Buchanan, dated February 27, 1985, at 5. The letter expressed some confidence in Judge Moore. The letter expressed the desire that Judge Moore would be able, by making the personal sacrifice of refusing the 10th Circuit appointment, to obtain some comprehensible response from the Executive and Legislative Branches. Respondent's Exhibits, letter to Judge Moore, dated May 16, 1985 at 1-2. The letter was also accompanied by a photocopy of a letter written to a religious leader further setting forth Petitioner's religious credentials. Judge Moore was supplied with a photocopy of a letter Petitioner wrote to one Bishop Frey as background: the letter contains a very brief account at 5-11 of events which occurred upon which Petitioner's religion is based. See Respondent's Exhibits, letter to Judge Moore, dated May 16, 1985

at 2, 10; letter to Bishop William Frey, dated April 20, 1985. Petitioner's letter to Judge Moore was a personal communication and plainly was not the initiation of any legal proceeding against the Executive and/or Legislative Branch. Furthermore, the Record contains no allegations that there was any legal proceeding before Judge Moore which could be affected in any way by Petitioner's letter.

The Record contains no allegations that any client of Petitioner's, past, present or prospective was injured or complained of injury caused by Petitioner as a result of legal representation extended by Petitioner. The Record contains no allegations that Petitioner was even accepting clients.

The Record contains no allegations that the U.S. Secret Service was concerned about Petitioner's letters to

President Reagan beyond asking Petitioner a few questions.

The Record contains no allegations of any criminal charges, civil action and/or disciplinary complaint filed against Petitioner.

An "Original Proceeding in Disability" was instituted on May 20, 1985, in the Supreme Court, State of Colorado, Case No. 85 SA 182.

Committee Counsel, Colorado Supreme Court Grievance Committee, filed a "Petition" in the Supreme Court State of Colorado, (also "State Court") on May 20, 1985, requesting the State Court to order Petitioner to show cause within ten days why Petitioner "should not be examined by a qualified medical expert to determine whether... [Petitioner] is incapable of continuing to practice law by reason of mental infirmity." A "Supplement to Petition," containing all but one of

Petitioner's letters comprising Respondent's Exhibits, was filed May 22, 1985. The State Court rendered an Order to Show Cause and a Rule to Show Cause to that effect on May 23, 1985. The "Petition" was filed and the State Court's Order rendered under a Rule promulgated by the Colorado Supreme Court providing for an "original proceeding in disability." See C.R.C.P. 241.19.

Petitioner appeared specially, representing himself, objecting to the jurisdiction of the State Court over the person of Petitioner and over the subject matter and filing a Motion to Strike, dated June 3, 1985, and a Motion to Quash, dated June 3, 1985.

Petitioner first raised questions as set forth in paragraphs 1, 2 and 3, Statement of Questions, above, concerning the First Amendment Freedoms in Petitioner's "Motion to Strike," dated June

3, 1985, at 1-3. Petitioner first raised the questions as set forth in paragraph 5, Statement of Questions, above, concerning substantive and procedural due process in said Motion to Strike as follows: 5(a) [at 3-4]; 5(b) [at 11]; 5(c) [at 7-8]. 5(d) [at 3-4]; 5(e) [at 7-8]; 5(f) [at 8]. Petitioner first raised the question as set forth in paragraph 7, Statement of Questions, above, concerning a one man inquisition in said Motion at 3. Petitioner first raised the question as set forth in paragraph 8, Statement of Questions, above, concerning the Equal Protection Clause in said Motion at 3-4. The State Court denied said Motion on August 12, 1985.

Petitioner first raised questions as set forth in paragraph 4, Statement of Questions, above, concerning the First Amendment Right to Privacy in Peti-

tioner's "Motion For Further Enlargement of Time (Motion to Strike"), dated June 3, 1985 at 9. Petitioner first raised questions as set forth in paragraph 5(g), Statement of Questions, above, concerning substantive and procedural due process in said Motion at 17, para. 23. Petitioner first raised questions as set forth in paragraph 6, Statement of Questions, above, concerning the reversal of the burden of proof in said Motion at 17-19. The State Court granted said Motion insofar as enlarging the time period for filing a Brief was concerned on June 19, 1985. However, the State Court was silent on the Constitutional questions.

Petitioner has specified in the body of the herein Petition the stage that he first raised the federal questions sought to be reviewed. Petitioner repeatedly raised the federal questions in subsequent stages as demonstrated by excerpts

from the Record quoted in the herein "Appendix."

Because of the numerous questions raised relating to paragraph 5 of the "Statement of Questions," herein and in order to save undue expense to himself relating to that issue Petitioner has quoted excerpts only from early and later Motion/Briefs. Questions relating to that paragraph were raised repeatedly by Petitioner in intervening Motions/Briefs.

On August 29, 1985 the State Court ordered Petitioner to "submit to a medical examination by one Dr. Frederick M. Miller [a psychiatrist] ... on or before September 30, 1985." Petitioner considered this Order to be a gross violation of Petitioner's Constitutional rights. Therefore, Petitioner refused. Petitioner filed on September 30, 1985 his "Motion For Reconsideration Of The Order And Judgment," and "Notice of

Appeal," both dated September 30, 1985. The State Court denied Petitioner's Motion for a Reconsideration Of The Order and Judgment" on October 3, 1985.

On its own Motion the State Court again ordered Petitioner to submit to a psychiatric examination on or before October 31, 1985 giving Petitioner the choice of submitting to the examination or being "transferred to disability inactive status without further hearing." Petitioner again refused. Petitioner once again filed on November 8, 1985, a "Motion For Reconsideration Of The Order And Judgment" and a second "Notice Of Appeal," both dated November 8, 1985. The State Court denied Petitioner's second "Motion For Reconsideration Of The Order And Judgment" on November 13, 1985.

On November 8, 1985, the State Court entered its Order dated November 7, 1985 in which Petitioner was "transferred to

disability inactive status until further Order of this Court."

No hearing whatsoever was provided Petitioner. At no time did the State Court render an opinion of law. The State Court made no findings of fact other than the brief, flat conclusory statement contained in its Order dated October 11, 1985.

ARGUMENT

Introduction

The case at bar is a case of first impression in a rather new and undeveloped context: the attorney - mental state - disability proceeding context. In Petitioner's opinion, it is obvious from a review of the entire Record that the State Court has been unable to relate important Constitutional questions to this type of context. Neither has the State Court been able to articulate this.

State Action of this nature has

important, far-reaching Due Process implications. It opens the door for state courts to find an attorney at fault for what are, in effect, "elementless crimes" or "elementless disciplinary violations" by the simple and expedient means of the court finding that the attorney is "mentally infirm." The Court should halt this important trend which is highly destructive to Constitutional protections before it advances too far.

This is all the more important because Petitioner would contend that attorney regulatory proceedings are quasi-criminal in nature. See Konigsberg v. State Bar of California, 353 U.S. 252, 257-258 (1957); Vitek v. Jones 445 U.S. 480, 491-492 (1980).

The State Court did not even acknowledge the presence of the important Constitutional questions raised repeatedly by Petitioner. The only implication

that can be drawn from this is that, in the opinion of the State Court neither the Constitution of the United States nor the Constitution of the State of Colorado exist in Colorado. The State Court has also legislated, interpreted and applied a confusing statutory framework in such a manner as to abdicate its judicial functions and place unconstitutionally excessive reliance upon the opinion of a single psychiatrist. This is judicial engineering at its worst: an elaborate scheme to produce a "scientific" result in the field of adjudication.

The case at bar is also a clear example of a recent destructive and nationwide trend: reversal of the burden of proof. See, the discussion herein, below, in the "Argument" in the section "Burden of Proof." This trend is legislative and prosecutorial engineering at its worst. This trend may also be

responsible for the overcrowded dockets.

The State Court has decided important Constitutional questions not settled by this Court. The State Court has also decided several paramount Constitutional questions in a manner in conflict with long lines of decisions of the Court. There are special and important reasons for the Court to grant the herein Petition for a Writ of Certiorari. R.Sup.Ct. 17.1(c).

First Amendment Freedoms

The Orders of the State Court exceed by far the prohibitions contained in the First Amendment. The State Court has left the secular realm and extended its jurisdiction into the realm of Spiritual phenomena - in direct contradiction to a long line of decisions of the Court. Wallace v. Jaffree, 53 U.S.L.W.4665, 4669 (U.S. Supreme Court, June 4, 1985); Wooley v. Maynard, 430 U.S. 705, 714-715

(1977).

Petitioner wrote letters. The Court has permitted State action which penalizes the exercise of First Amendment Rights - whether speech or expressive actions - in only a few well-defined classes of cases. The State action in the case at bar fits into none of those classes of cases.

The State action in the case at bar is a dubious intrusion affecting Petitioner's First Amendment Rights to practice religion, to be free from State compelled religious beliefs, to exercise speech and to petition. Thomas v. Collins, 323 U.S. 516, 530 (1945). This Court has held that "it is the character of the right, not of the limitation, which determines what standard governs the choice." Id. 323 U.S. at 530.

Obvious from the Record is the fact that the exercise of religion as well as

speech and petition "[were] ... essential part[s] of the occasion, unless all meaning and purpose were to be taken from it." Id. 323 U.S. at 534.

Assuming arguendo that Petitioner's letters contained religious exercise or speech not protected, the penalty must be taken to have rested on religious exercise and speech which is protected as much as on religious exercise and speech which is not protected. Therefore the Orders cannot stand. Thomas, supra, 323 U.S. at 541.

The State must demonstrate "a compelling state interest." N.A.A.C.P. v. Button, 371 U.S. 415, 439 (1963). One District Court has observed that the Court has applied an even higher standard: the State must demonstrate "the gravest abuses, endangering paramount interests." Nicholson v. Board of Commissioners of the Alabama State Bar

Association, 338 F.Supp. 48, 58 (D.C. M.D. Alabama, 1972), quoting Thomas, supra, 323 U.S. at 530. Applying any of these tests the Court has invariably looked inside the State interest not just at the outside shell, as it were.

Free Exercise Clause

To Petitioner's knowledge the court has never permitted state action which penalizes mere words stating only religious beliefs. See Cantwell v. Connecticut, 310 U.S. 296, 303 (1940). The Court separated expression of religious beliefs from prohibited secular actions which could be penalized by State action in United States v. Ballard, 322 U.S. 78, 88 (1944).

The State may not penalize a person for exercising his religious beliefs by refusing to perform expressive action required by the State. West Virginia State Board of Education v. Barnette, 319

U.S. 624 (1943). Federal Courts have applied this to the actions of a state bar association. Nicholson, supra, 338 F.Supp. at 58. One District Court has even applied this principle in a case in which the State would appear to have an almost overriding State interest - defense of the Nation. United States v. Sisson, 297 F.Supp. 902, 910 (D.C. Mass., 1969). The Government's case was dismissed on other grounds in United States v. Sisson, 399 U.S. 267, 270 (1970).

Many of the cases decided under the Free Exercise Clause appear to involve refusals on religious grounds to perform some word or act required by the State. Even where the person's religious practice was the event which caused a dilemma from which the person sought relief by seeking public benefits, the Court has held that the citizen is entitled to the public benefits. Sherbert v. Verner, 374

U.S. 398 (1963). Petitioner is not suing the State in order to obtain a public benefit, rather Petitioner has been sued by the State which has infringed a valuable property right or interest.

The Free Exercise Clause extends its protections to non-conventional religions and philosophies similar to religious beliefs. Sisson, supra, 297 F.Supp. at 905.

Shouldn't the Court make it clear that, under the Constitution, the State actions - not the private religious practices - are the exceptions?

Establishment Clause

Petitioner's action violates both the Free Exercise Clause and the Establishment Clause. See Barnette, supra and Lemon v. Kurtzman, 403 U.S. 602. (1971).

Three Justices of the present Court have expressed reservations about the Lemon test. Jaffree, supra, 53 U.S.L.W.

at 4673, 4677-78 (concurring opinion of O'Connor, J.); Id. at 4679 (dissenting opinion of Burger, C.J.); Id. at 4683-4686 (dissenting opinion of Rehnquist, J.). The issues which the case at bar raises demonstrates the shortcomings of the Lemon test. Many of the cases coming before the Court involve relatively peripheral matters, particularly economic issues. Jaffree, supra, 53 U.S.L.W. at 4679 (dissenting opinion of Burger, C.J.).

The leading Establishment Clause decisions have been concerned with facts quite different from the facts present in the case at bar. McCollum v. Board of Education, 333 U.S. 203 (1948); Everson v. Board of Education, 330 U.S.1 (1947); Board of Education v. Allen, 392 U.S. 236 (1968); Walz v. Tax Commission, 397 U.S. 664 (1970); Engel v. Vitale, 370 U.S. 421 (1962); Lemon, supra; Jaffree,

supra. Thus, the principles of law enunciated in those decisions are not easily transferable to the facts present in the case at bar.

Nevertheless, the Court has maintained the principle that "No person can be punished for entertaining or professing religious beliefs or disbeliefs." McCollum, supra, 333 U.S. at 210 (Black, J., delivering the opinion of the Court). Respondent's actions clearly violate that principle.

The statutory framework has an obstensibly secular purpose. However, the Order was based entirely on Petitioner's letters. Therefore, as interpreted and applied to Petitioner, Respondent's actions have a clearly religious purpose. Jaffree, supra, 53 U.S.L.W. at 4670; See Lemon, supra, 403 U.S. at 612-613; Cantwell, supra, 310 U.S. at 300. The Court found that the addition

of a single phrase "'or voluntary prayer'" was sufficient to indicate religious purpose and, impliedly coercion. Jaffree, supra, 53 U.S.L.W. at 4671. In the case at bar, it is not a single phrase but the entire circumstances which indicate a religious purpose and coercion.

Even if Respondent has expressed a secular purpose, it is not plausible given the evidence. See Jaffree, supra, 53 U.S.L.W. at 4670-4671. The Establishment Clause can be eroded in a myriad of subtle ways. Id. at 4671. The State action will not pass Constitutional muster if the secular purpose is merely a sham. Id. at 4672 (concurring opinion of Powell, J.); Id. at 4675 (concurring opinion of O'Connor, J.); Stone v. Graham, 449 U.S. 39 (1980).

Respondent's actions certainly have the effect of inhibiting Petitioner's

religion while advancing those religions which meet with the approval of Respondent. Estate of Thornton v. Caldor, Inc., 53 U.S.L.W. 4853, (United States Supreme Court, June 26, 1985); See Lemon, supra, 403 U.S. at 612-613; Jaffree, supra, 53 U.S.L.W. at 4670.

Respondent has used its immense power, prestige and financial resources to indirectly coerce Petitioner, conveying a message that it would be better if Petitioner practised another religion. Id. 53 U.S.L.W. at 4673-4674 (concurring opinion of O'Connor, J.); Lemon, supra, 403 U.S. at 616; Cf. California Motor Transport Co. v. Trucking Unlimited, 404 U.S. 508, 515 (1972). Respondent's insertion of itself into the religious controversy between Petitioner and the departments of government constitute "active involvement of the sovereign in religious activity."

See Walz, supra, 397 U.S. at 668; Lemon, supra, 403 U.S. at 612.

Under such circumstances, even sincere efforts to remain impartial towards various religions still violate the Establishment Clause. McCollum, supra, 333 U.S. at 207-210; See Jaffree, supra, 53 U.S.L.W. at 4668.

Respondent's action fosters an excessive government entanglement with religion. Lemon, supra. See Jaffree, supra.

The unwarranted extension of the State court's supervision over such matters as Petitioner's private letters establishes a system of evaluation and inspection which can only foster State entanglement with religion. Lemon, supra, 403 U.S. at 620-21.

Free Speech Clause

Respondent's actions violate the Free Speech Clause of the First Amendment of

the Constitution. Baird v. State Bar of Arizona, 401 U.S. 1 (1971) and Konigsberg, supra, 353 U.S. at 262, 273 are controlling. The First Amendment prohibits a State from denying a person admission to the practice of law because he holds certain beliefs. Baird, supra, 401 U.S. at 6-7; Konigsberg, supra, 353 U.S. at 273. The protection is equally present in the case of an attorney admitted to the practice of law. Cf. In Re Sawyer, 360 U.S. 622 (1959). The Court has held that views and beliefs are immune from bar association inquisition. Baird, supra, 401 U.S. at 8; Cf. Schneider v. State 308 U.S. 147, 164 (1939) (State cannot require a person to undergo a "burdensome and inquisatorial examination" in order to obtain permission to express beliefs and views). The Court held in Konigsberg that a State Bar cannot exclude a person from the practice

of law based on evidence that consists of political views and beliefs. Konigsberg, supra, 353 U.S. at 262; 273-274; Cf. Spevack v. Klein, 385 U.S. 511, 512, 514 (1967). The State Court should not be permitted to evade the Constitutional prohibitions by arranging for a psychiatrist to ask questions which they cannot ask, such State action being based on letters which themselves would not support a suspension Order. Moreover, since an examination by a psychiatrist is an invasion of privacy in addition to a penalty (when coupled with an Order threatening suspension) the burden the State must meet before requiring such an examination should be greater than the burden the State must meet before suspending an attorney's license.

The Court has held that the interest of the State in protecting the public against the solicitation of legal repre-

sentation is not sufficient to permit the State to penalize unions and other associations from exercising their First Amendment rights by associating with an attorney who represents their members. Brotherhood of Railroad Trainmen v. Virginia ex. rel. Virginia State Bar, 377 U.S. 1 (1964); Button, supra; United Mine Workers of America, District 12 v. Illinois State Bar Association, 389 U.S. 217 (1967). Similarly, the Court has held that the interest of the State in preserving itself - which is certainly a greater interest than the interest asserted in the case at bar - is not sufficient to penalize individuals for advocating violent overthrow. Dennis v. United States, 341 U.S. 494 (1951); Yates v. United States, 354 U.S. 298 (1957) [overruled as to the issue of Double Jeopardy in Burks v. United States, 437 U.S. 1, 18 (1978)]; Noto v. United

States, 367 U.S. 290 (1961); Brandenburg v. Ohio, 395 U.S. 444 (1969).

The broad State interest does not justify infringement of free speech in all classes of cases arguably coming within the purview of such broad interest. Mine Workers, supra 389 U.S. at 222; See Schneider, supra, 308 U.S. at 163.

An underlying rationale seems to be that State law has been interpreted to apply to and/or applied to cases outside the periphery of the original objective of the State law. Non-solicitation laws were enacted to avoid "ambulance chasing," not arrangements by trade unions or other associations to obtain legal representation in a more efficient and economical matter. See Button, 371 U.S. at 431, 434, 437-444. Sedition laws were enacted to prevent actual events, not the advocacy of other forms of government.

See Noto, supra, 367 U.S. at 297-298; Dennis 341 U.S. at 494, Cf. Yates, supra, 354 U.S. at 318. Breach of the peace laws were enacted to deter and punish actual breaches of the peace, not expressions of belief Brown, v. Louisiana, 383 U.S. 131, 151 (1966).

Therefore, the Court will examine the substance of the factual context not the form, "[for] a State may not, under the guise of prohibiting professional misconduct, ignore constitutional rights." Button, supra, 371 U.S. at 439; Mine Workers, supra 389 U.S. at 222. The standards by which the Court will examine the State action are strict in the area of free expression. Button, supra, 371 U.S. at 432; Yates, supra, 354 U.S. at 310. Moreover, the Court will consider factual contexts outside that of the case at bar in order to evaluate the effect of the State action. Button, supra, 371

U.S. at 432: In the case at bar, if Respondent is permitted to interpret and apply the statutory framework in the manner it does then many beliefs and views are in danger.

The danger must be more than "speculative" Mine Workers, supra, 389 U.S. at 223. The danger must not be "vague" Button, supra, 371 U.S. at 432-434. The danger must be "clear". Thomas, supra, 323 U.S. at 530. This test is also found in the second requirement of the Brandenburg test that the advocacy must be accompanied by efforts directed towards inciting or producing imminent violent overthrow. Brandenburg, supra, 395 U.S. at 447. Yates, supra, 354 U.S. at 318.

Furthermore, the speech or expressive action, in order to be penalized, must actually present a real danger to the State. Thus, Brandenburg added the third requirement that the advocacy and efforts

are likely to incite violent overthrow. Brandenburg, supra 395 U.S. at 447. Thus, the Court found the potential danger insufficient where there was "not one single instance of abuse, of harm to clients, of any actual disadvantage to the public or to the profession." Mine Workers, supra, 389 U.S. at 225. The Court applies a doctrine similar to proximate cause, as it were. See Schenck v. United States, 249 U.S. 47, 52 (1919); Brandenburg, supra, 395 at 450 (Concurring opinion of Douglas, J.).

Right to Petition Clause

The Right to Petition is "fundamental to the very idea of a republican form of government." U.S. v. Cruikshank, 92 U.S. 542, 552 (1875); Accord Webb v. Fury, 282 S.E. 2d 28, 34 (W.Va., 1981). The writing of letters to government officials is a "natural and proper" method for exercise of the Right to Petition.

Cf. Schneider, supra, 308 U.S. at 161. To penalize Petitioner for this would be "the very abuse of which engendered the struggle in England." Id. 308 U.S. at 164.

Respondent should not be permitted to penalize Petitioner's exercise of the Right to Petition merely because the statutory framework does in fact provide a helpful means of dealing with some matters within Respondent's competence. Mine Workers, 389 U.S. at 222. Interpretation and/or application of the statutory framework in such a way as to deprive Petitioner of the Right to Petition is not permissible under the Constitution. Eastern Railroad Conference v. Noerr Motor Freight, 365 U.S. 127, 139 (1961).

The dangers sought to be avoided by interpretation and/or application of the broad rules contained in the statutory framework as to Petitioner are "far too

speculative to justify the broad remedy invoked by the State." Mine Workers, supra, 389 U.S. at 222-223. Button, supra. The fact that Petitioner has represented himself competently conclusively proves from the Record that Petitioner is not "incompetent." The Record is devoid of any showing of any harm to any clients or to the public, past, present or prospective. Mine Workers, supra, 389 U.S. at 223-225; Button, supra, 371 U.S. at 443; Railroad Trainmen, supra,

The Petition Clause extends broad protection to communications to public officials. The protection extends to communications to all departments of government. Motor Transport, supra, 404 U.S. at 510. The protection extends to even massive and concerted efforts to influence the departments of government regardless of intent or purpose, even if

that intent or purpose is to destroy the business of competitors. Noerr, supra, 365 U.S. at 138, 140; United Mine Workers of America v. Pennington, 381 U.S. 657, 670 (1965). While the letters do not involve anti-trust issues, the principle in operation is evident. To penalize Petitioner would also "deprive the government of a valuable source of information." Noerr, supra, 365 U.S. at 139. Griswold v. Connecticut, 381 U.S. 479, 482 (1965).

The Court's concern in this area is to assure that all citizens have access to the departments of government. Noerr, supra, 365 U.S. at 144; Motor Transport, supra, 404 U.S. at 511, 515. The only exception to this principle is the "sham" exception fashioned by the Court in Motor Transport, supra 404 U.S. at 515. Petitioner's exercise of this right in no manner resembles the "sham" exception.

All persons written to or about had access to departments of government equal to if not much greater than Petitioner's access.

In fact, Respondent's initiation of legal proceedings against Petitioner can be viewed as a powerful, massive and concerted attempt by the State to limit Petitioner's access to the departments of government in the manner of the entrepreneurs in Motor Transport, supra.

Respondent has made certain innuendos that certain of Petitioner's letters contain "threats" and/or constitute unfair criticism of judicial candidates. The letters themselves negate this innuendo. For example, the letter to President Reagan dated December 21, 1984 contains this passage at page eight of the letter: "The churches and political authorities I contact by means of letters bear great responsibility. I cannot and

will not contact every single church and political authority, let alone every man and woman [in the entire world] by letter." See Respondent's Exhibits, letter to Reagan/Herrington, dated December 21, 1984 sent with cover to Reagan/-Herrington, of same date. The letters clearly were intended to be read together as an entirety -- along with the Old and New Testaments. This passage is inconsistent on its face with any "threat" against President Reagan or any other person within the meaning of the law. The passage reminds political and religious leaders of their responsibilities which they have assumed by becoming leaders.

Not to preserve this principle just discussed would be to invite the worst government possible. Petitioner's letters all supplied President Reagan and Judge Moore with information that Peti-

tioner sincerely believed they ought to have in their possession in order that the decisions of the Executive Branch and the Congress (not the Judicial Branch) would be the best possible.

There is no requirement that the Right to Petition be exercised in a polite or bland manner. Wood v. Georgia, 370 U.S. 375, 391 (1962); Thomas, supra, 323 U.S. at 536-537; See Cantwell, supra, 310 U.S. at 310. Nor should Petitioner's Freedom of Speech or Right to Petition be curtailed because Petitioner happens to be an attorney. Wood, supra, 370 U.S. at 393.

The Court has held that if a person's petitions contain "bad judgment" or "unsubstantiated charges" then the Constitutional method for exposing such defects is to use the various organs of communication, not to impose penalties. Id. 370 U.S. at 389.

Right to Privacy

The Orders, which all have the purpose of obtaining Petitioner's submission to an examination of his mental state, constitute an invasion of Petitioner's Right to Privacy. Griswold, supra; N.A.A.C.P. v. Alabama 357 U.S. 449 (1958); See Konigsberg, supra. The case at bar presents a stronger case for creation of a zone of privacy than Griswold, supra. Griswold concerned marital relations -- an activity not specifically mentioned in the Constitution. The case at bar concerns activities which are certainly specifically mentioned in the Constitution. As such, they create zones of privacy. Griswold, supra, 381 U.S. at 484.

The State action seeks to obtain from Petitioner information - "data" about Petitioner's mental state which will inevitably include "data" about Peti-

tioner's religious and political beliefs and views - which the State has no right to seek. Id. 381 U.S. at 483. N.A.A.C.P. v. Alabama, supra, 357 U.S. at 462. Moreover, the information sought doesn't really consist of facts.

Due Process Clause

The State Action violates the Due Process Clause. Konigsberg, supra, 353 U.S. at 262 (evidence does not rationally support grounds for rejection of application to practice law); Papachristou v. City of Louisville, 405 U.S. 156 (1972) (penalizes activities which are innocent).

Petitioner does not raise before the Court the issue that Petitioner was denied Due Process owing to the fact that there was no hearing whatsoever. Petitioner should not be subjected to an expensive and intrusive hearing when the "grounds" for the proceeding are based

entirely on protected practice of religion and speech.

However, other violations of Due Process occurred and Petitioner raises these issues.

The Colorado statutory framework is overly broad and vague - certainly as interpreted and applied to Petitioner. It permits a disability proceeding to be instituted and maintained based on conclusory and vague allegations. Papachristou 405 U.S. at 162; Cruikshank, supra, 92 U.S. at 558-559.

It fails to give attorneys notice that letters such as Petitioner's letters can provide grounds for questioning and examining the mental state of the attorney. Papachristou, supra, 405 U.S. at 162.

It fails to provide any standards for adjudicating Petitioner's mental state separate from his religious and political

beliefs. See Id. 405 U.S. at 170. It fails to incorporate any provisions for limiting the exercise of discretion in such a manner that important Constitutional liberties are protected. See Cleveland v. LaFleur, 414 U.S. 632, 650 (1974). The standards, if they are standards, are vague (e.g., "emotional infirmity"). See C.R.C.P. 241.19(a).

The State Court has ignored even what vague standards exist. The Colorado statutory framework specifies lack of "competency" in one place, see C.R.C.P. 241.19(a) and specifies "incapable" in another place, see C.R.C.P. 241.19(c). Respondent commenced the "disability proceeding" to determine if Petitioner is "suffering from some degree of impairment which makes him incapable of competently practicing law." See Respondent's "Petition" dated May 20, 1985 at 3. [Emphasis added]. The State Court stated that

Petitioner "is incapable of continuing to practice law." See Order, dated October 11, 1985. The State Court ignored the standard (element) of "competency", glossed over it, and failed to make any findings concerning it. Compare the Orders, dated August 29, October 11 and November 7, 1985. An Order based on a cause of action which fails to prove all the elements or standards to be applied in a cause of action violates Due Process. Thompson v. City of Louisville, 362 U.S. 199, 204 (1960).

Consequently, the Colorado statutory framework "permits and encourages an arbitrary and discriminatory enforcement of the law." Papachristou, supra, 405 U.S. at 170, La Fleur, supra, 414 U.S. at 640.

The Colorado statutory framework poses a great danger for an attorney who expresses controversial religious beliefs

and opinions. It has the potential to penalize speech that by modern standards would be innocent. See Papachristou, supra, 405 U.S. at 163. The Court's finding that the expression of religious and political beliefs and opinions can constitute grounds for a "disability proceeding" and an examination of Petitioner's mental state bears no rational relationship to the valid state interest of relgulating the practice of law. La Fleur, supra, 414 U.S. at 643; Konigsberg, supra, 353 U.S. at 262; See Thompson, supra, 362 U.S. at 204; Cf. Spevack, supra, 385 U.S. at 512, 514. Even if the State Court had rendered a finding the Court still has a duty to examine the evidence "to see whether it furnishes a rational basis for the characterization put on it by the lower Courts." Sawyer, supra, 360 U.S. at 628. There has been no cause of action fairly made. In Re

Oliver, 333 U.S. 257, 278 (1948).

Petitioner doubts the State Court read the letters in the light of the Old and New Testaments even though the letters make detailed references to such Books. See Respondent's Exhibits, letters to Reagan/Herrington, dated November 14 and December 21, 1984 sent with cover letter to Reagan/Herrington, dated December 21, 1984. Orders obstensibly based on evidence before the Court but which the Court did not consider cannot stand.

Burden of Proof

Respondent has shifted the burden of proof from itself to Petitioner in violation of the Due Process Clause of the Constitution. The burden of proof properly rests with the State plaintiff or prosecutor. Due Process requires this. Cf. Speiser v. Randall, 357 U.S. 513, 525-526 (1958); In re Winship, 397

U.S. 358, 369-372 (1970) (concurring opinion of Harlan, J.). State law requires this. See C.R.S. 13-25-127(1). Exchange National Bank v. Sparkman, 191 Colo. 534, 554 P.2d 1090 (1976). The statutory framework requires this. C.R.C.P. 241.19(e) (requiring Respondent to prove its case by "clear and convincing" evidence). This principle has been firmly imbedded in English and American Common Law since their beginnings. See McCormick, Evidence 799 n. 88 (2d ed. 1972).

The means by which Respondent reversed the burden of proof are not necessarily express or obvious. This basic, important protection for defendants can be eroded by a subtle combination consisting of summary Findings and Orders by the Court combined with certain prosecutorial tactics.

The use of the "show cause" procedure

results in a tacit shift in the burden. This tacit shift is bolstered by prosecutorial tactics. An example is the phenomenon of "mushrooming issues" in the case at bar. When directed by the State Court to respond to the issues raised by Petitioner, Respondent paid little if any attention to this directive, instead Respondent inserted new innuendos. An example is the "threat" innuendo conveyed by Respondent for the first time in its "'Response'", dated August 1, 1985, at 4, para 9. This characterization was, on its face, legal argument, not an allegation of fact, however, it conveyed an innuendo that for prudence's sake Petitioner objected to. The innuendo was improperly conveyed two months subsequent to the commencement of the "disability proceeding" in what was in effect the fifth "Petition" filed by Respondent. See also Petitioner's "Third Motion to

Strike," dated August 26, 1985 at 1-4, 16-17. The result is an ever-increasing burden on Petitioner. The final tactic is to structure the context for appeal to be as time-consuming, difficult, repetitive and expensive as possible.

Equal Protection Clause

Many citizens of the United States, including attorneys in Colorado, express diverse religious and political beliefs and views. To many persons many of these beliefs and views are incorrect, even incomprehensible. Nevertheless, the citizens who express such views are not taken to court. Petitioner has been singled out by Respondent, because of his religious and political beliefs and views, taken to court and penalized. Petitioner was denied important Constitutional protection as discussed herein, above, and similar protections contained in the Constitution of Colorado. See

Colorado Constitution, Art II, Sections 4, 10, 23, 24 and 25. The State action also was based in part on information obtained in violation of the Privacy Act of 1974. 5 U.S.C.552(a), etcetera. The State action was also contrary to national policy as contained in the Civil Rights laws, 42 U.S.C. 1983, for example. Such State action violates the Equal Protection Clause. Konigsberg, supra, 353 U.S. at 262; Brown, supra, 383 U.S. at 151 (concurring opinion of White, J.); See Id., 383 U.S. at 141-143 (opinion of the Court). The Record is also replete with instances wherein Petitioner was denied the protection of various State laws. For example, the State laws which govern procedure in disability cases are the Colorado Rules of Civil Procedure and the Colorado Rules of Evidence. C.R.C.P. 241.14(d). Sometimes these Rules were followed, sometimes they were not

followed. See, e.g. the discussion herein concerning the "mushrooming issues" in the section "Burden of Proof" of the "Argument." The Record strongly suggests that, after some point, the State Court ceased to apply the rules of procedure equally to Petitioner. Such State action violates the Equal Protection Clause.

One Man Inquisition

The problem that the use of "experts" in the process of adjudication poses is that the adjudicative function may be abdicated and placed in the hands of the "expert" in violation of Due Process, the Jury Clauses and State law. See C.R.S. 13-70-102(1). Expert testimony may be necessary in a variety of areas. However, almost all expert testimony can be corroborated by external facts. This is not the case with psychiatric testimony which deals mostly with theory and

"data" that has no physical embodiment. Permitting the prosecution to require psychiatric examination of a defendant when the defendant uses psychiatric testimony as a defense in a criminal trial is one thing. Designating a psychiatrist as an inquisitor is quite another thing. Therefore, the case at bar presents a question similar to that posed in In re Oliver, supra, 333 U.S. at 264, but not reviewed. Also, when combined with a "jury" of judges -- because judges think differently from ordinary citizens -- great abuse is possible.

Review of Moot Orders

Even though the Orders of the State Court dated August 29, 1985 and October 11, 1985 have become moot it is still appropriate for the Court to review these Orders because they present issues "'capable of repetition, yet evading review'." Super Tire Engineering Co. v.

McCorkle, 416 U.S. 115, 122 (1974); Accord, Moore v. Ogilvie, 394 U.S. 814 (1969); United States v. Trans-Missouri Freight Association, 166 U.S. 290, 307-309 (1897); Southern Pacific Terminal Company v. I.C.C. and Young, 219 U.S. 498, 515 (1911).

DATED this 7th day of February, ANNO DOMINI, 1986.

(SIGNED)

Michael Brauer
2075 Crabtree Drive
Littleton, Colorado 80121
(303) 798-2515

Pro Se

APPENDIX

I. OPINIONS, ETCETERA, DELIVERED UPON RENDERING OF ORDER

There were none, except the Orders sought to be reviewed themselves.

II. OTHER OPINIONS, ETCETERA

SUPREME COURT, STATE OF COLORADO

Case No. 85SA182

ORIGINAL PROCEEDING IN DISABILITY

ORDER

THE PEOPLE OF THE STATE OF COLORADO,

Complainant,

vs.

MICHAEL BRAUER,

Respondent.

Upon consideration of the Motion to Strike and the Motion to Quash Petition Because of Insufficiency of Service of Process filed by the Respondent and now being sufficiently advised in the premises,

IT IS THIS DAY ORDERED that the Motion to Strike shall be, and the same hereby is, Denied.

IT IS FURTHER ORDERED that the Motion to Quash shall be, and the same hereby is, Denied.

IT IS FURTHER ORDERED that the Respondent shall show cause no later than August 26, 1985, pursuant to May 23, 1985, Rule to Show Cause. (Copy attached)

BY THE COURT, AUGUST 12, 1985.

ENTERED, AUGUST 12, 1985.

SUPREME COURT, STATE OF COLORADO

Case No. 85SA182

Original Proceeding in Disability

ORDER OF COURT

THE PEOPLE OF THE STATE OF COLORADO,

Complainant,

vs.

MICHAEL BRAUER,

Respondent.

Upon consideration of the Second

Motion to Strike filed by the Respondent in the above cause, and now being sufficiently advised in the premises,

IT IS THIS DAY ORDERED that the relief requested in paragraph 2 of Respondent's Second Motion to Strike relating to Complainant's Response to Respondent's Motion to Strike, dated June 17, 1985, shall be, and the same hereby is, granted.

IT IS FURTHER ORDERED that the relief requested in paragraph 3 of Respondent's Second Motion to Strike relating to same Response shall be, and the same hereby is, denied.

BY THE COURT, JULY 30, 1985.

ENTERED July 31, 1985.

SUPREME COURT, STATE OF COLORADO

Case No. 85SA182

Original Proceeding in Disability

ORDER OF COURT

THE PEOPLE OF THE STATE OF COLORADO,

Complainant,

vs.

MICHAEL BRAUER

Respondent.

Upon consideration of the Notice and Correction of Typographical Error filed by the Respondent in the above cause, and now being sufficiently advised in the premises,

IT IS THIS DAY ORDERED that the extension requested in paragraph one shall be and the same hereby is, granted and the Brief in Support of the Motion to Strike shall be filed as of July 16, 1985.

BY THE COURT, JULY 30, 1985.

ENTERED JULY 31, 1985.

SUPREME COURT, STATE OF COLORADO

Case No. 85SA182

ORIGINAL PROCEEDING IN DISABILITY

ORDER OF COURT

THE PEOPLE OF THE STATE OF COLORADO

Complainant,

vs.

MICHAEL BRAUER,

Respondent.

Upon consideration of the Motion for Further Enlargement of Time to File Briefs in Support of Motion to Quash and Motion to Strike filed by the Respondent in the above cause, and now being sufficiently advised in the premises,

IT IS THIS DAY ORDERED that said Motion shall be, and the same hereby is, enlarged to permit filing of briefs by July 12, 1985.

BY THE COURT, JULY 2, 1985.

ENTERED JULY 3, 1985.

SUPREME COURT, STATE OF COLORADO

CASE NO. 85SA182

Original Proceeding in Disability

ORDER OF COURT

THE PEOPLE OF THE STATE OF COLORADO,

Complainant,

vs.

MICHAEL BRAUER,

Respondent.

Upon consideration of the Motion for Enlargement of Time to File a Brief in Support of the Motion to Quash and Motion to Strike filed in the above cause, and now being sufficiently advised in the premises,

IT IS THIS DAY ORDERED that said Motion shall be, and the same hereby is, granted, and the Brief in Support of the Motion to Quash and Motion to Strike shall be filed on or before Friday, June 28, 1985.

BY THE COURT, JUNE 19, 1985.

ENTERED JUNE 20, 1985.

SUPREME COURT, STATE OF COLORADO

Case No. 85SA182

Original Proceeding in Disability

ORDER OF COURT

THE PEOPLE OF THE STATE OF COLORADO,

Complainant,

vs.

MICHAEL BRAUER,

Respondent.

Upon review of the Motion to Strike and the Motion to Quash Petition Because of Insufficiency of Service of Process filed by the Respondent, and now being sufficiently advised in the premises,

IT IS THIS DAY ORDERED that the Complainant shall file a Response to the above motions on or before Monday, June 17, 1985.

BY THE COURT, JUNE 5, 1985.

ENTERED JUNE 5, 1985.

SUPREME COURT, STATE OF COLORADO

Case No. 85SA182

ORIGINAL PROCEEDING IN DISCIPLINE

RULE TO SHOW CAUSE

THE PEOPLE OF THE STATE OF COLORADO,

Complainant,

vs.

MICHAEL BRAUER,

Respondent.

THE PEOPLE OF THE STATE OF COLORADO TO MICHAEL BRAUER, GREETINGS:

You are hereby ordered and directed to appear in the Supreme Court of the State of Colorado within ten (10) days from the service hereof and answer in writing and show cause, if any you may or can have, why you should not be examined by a qualified medical expert to determine whether you are incapable of continuing to practice law by reason of mental infirmity.

Let a true copy of this rule, together with a copy of the petition herein be served upon you and each of you.

WITNESS, the Honorable William H. Erickson, Chief Justice of our Supreme Court, and the Seal of said Court, in the City of Denver, this 23rd day of May,

1985.

MAC V. DANFORD, Clerk

Colorado Supreme Court

Signed,

Linda L. Macias

Chief Deputy

ENTERED MAY 23, 1985.

SUPREME COURT, STATE OF COLORADO

Case No. 85SA182

ORIGINAL PROCEEDING IN DISABILITY

ORDER TO SHOW CAUSE

THE PEOPLE OF THE STATE OF COLORADO,

Complainant,

vs.

MICHAEL BRAUER,

Respondent.

Upon consideration of the Petition pursuant to C.R.C.P. 241.19(c) filed in the above entitled action and matter, and now being sufficiently advised in the premises,

IT IS THIS DAY ORDERED that a rule

to show cause issue out of this court commanding the respondent to answer in writing and show cause within ten (10) days from service of such rule why he should not be examined by a qualified medical expert to determine whether he (Brauer) is incapable of continuing to practice law by reason of mental infirmity.

IT IS FURTHER ORDERED that the Office of the Disciplinary Prosecutor shall represent the People of the State of Colorado in any hearing which may be necessary to determine whether respondent should be transferred to disability inactive status.

BY THE COURT, EN BANC, MAY 23, 1985.

ENTERED MAY 23, 1985.

III. ORDERS SOUGHT TO BE REVIEWED.

SUPREME COURT, STATE OF COLORADO

Case No. 85SA182

ORIGINAL PROCEEDING IN DISABILITY

ORDER OF COURT

THE PEOPLE OF THE STATE OF COLORADO,

Complainant,

vs.

MICHAEL BRAUER,

Respondent.

Upon consideration of the Motion for Reconsideration of the Order and Judgment filed by the Respondent in the above cause, and now being sufficiently advised in the premises,

IT IS THIS DAY ORDERED that said Motion for Reconsideration shall be, and the same hereby is, denied as moot.

BY THE COURT, NOVEMBER 13, 1985.

ENTERED NOVEMBER 14, 1985.

SUPREME COURT, STATE OF COLORADO

Case No. 85SA182

ORIGINAL PROCEEDING IN DISABILITY

ORDER OF COURT

THE PEOPLE OF THE STATE OF COLORADO,

Complainant

vs.

MICHAEL BRAUER,

Attorney-Respondent

Upon consideration of the Petition pursuant to C.R.C.P. 241.19(c), the Rule to Show Cause issued May 23, 1985, and the Order of Court dated October 11, 1985, and finding that the Respondent has not complied with the Order of October 11, 1985 by submitted [sic] to an examination by Dr. Frederick M. Miller and filing an affidavit with this Court indicating compliance with Order for medical examination, and now being sufficiently advised in the premises,

IT IS THIS DAY ORDERED that the Respondent, Michael Brauer, shall be, and he hereby is, transferred to disability inactive status until further Order of this Court.

BY THE COURT, NOVEMBER 7, 1985.

ENTERED NOVEMBER 8, 1985.

SUPREME COURT, STATE OF COLORADO

Case No. 85SA182

ORIGINAL PROCEEDINGS IN DISABILITY

ORDER

THE PEOPLE OF THE STATE OF COLORADO,

Complainant

v.

MICHAEL BRAUER,

Attorney-Respondent

Upon review of the file in this matter, it appears that on August 29, 1985, the respondent was ordered by this Court to submit to a medical examination by Dr. Frederick M. Miller on or before September 20, 1985; and

That respondent has filed a "Notice of Appeal" on October 1, 1985, in which he declines to submit to the ordered examination and gives notice that he intends to appeal the August 29, 1985 order of this Court to the United States Supreme Court; and

That Dr. Frederick M. Miller, by letter dated October 1, 1985, addressed to the Clerk of this Court, has confirmed that respondent has declined to submit to a psychiatric examination; and

That the petition of Committee Counsel and exhibits thereto establish cause to believe that the respondent is incapable of continuing to practice law by reason of mental or emotional infirmity or illness.

Therefore, on the Court's own motion, and pursuant to the Court's disciplinary and disability jurisdiction in all matters relating to the practice of law,

IT IS ORDERED that unless the respondent submits to a medical examination by Dr. Frederick M. Miller on or before October 31, 1985, and files an affidavit with this Court indicating compliance with our order for medical

examination before October 31, 1985, the respondent shall be transferred to disability inactive status without further hearing.

A copy of this order shall be served on respondent by mail.

BY THE COURT, October 11, 1985.

ENTERED OCTOBER 15, 1985.

SUPREME COURT, STATE OF COLORADO

Case No. 85SA182

Original Proceeding in Disability

ORDER OF COURT

THE PEOPLE OF THE STATE OF COLORADO,

Complainant,

vs.

MICHAEL BRAUER,

Respondent.

Upon consideration of the Motion for Reconsideration of the Order and Judgment filed by the Respondent in the above cause, and now being sufficiently advised in the premises,

IT IS THIS DAY ORDERED that said Motion for Reconsideration shall be and the same hereby is, Denied.

BY THE COURT, OCTOBER 3, 1985.

ENTERED OCTOBER 4, 1985.

SUPREME COURT, STATE OF COLORADO

Case No. 85SA182

Original Proceeding in Disability

ORDER OF COURT

THE PEOPLE OF THE STATE OF COLORADO

Complainant,

vs.

MICHAEL BRAUER

Respondent.

Upon consideration of the Demand for Jury Trial, Motion for Further Enlargement of Time, Answer, Motion to Dismiss for Failure to State a Claim, Brief in Support of Motion to Dismiss for Failure to State a Claim, Third Motion to Strike and Brief in Response to Complainant's Petition No. 5 filed by the Respondent,

and now being sufficiently advised in the premises,

IT IS THIS DAY ORDERED that the Demand for Jury Trial shall be, and the same hereby is, Denied.

IT IS FURTHER ORDERED that the Motion for Further Enlargement of Time shall be, and the same hereby is, Denied.

IT IS FURTHER ORDERED that the Motion to Dismiss for Failure to State a Claim shall be, and the same hereby is, Denied.

IT IS FURTHER ORDERED that the Third Motion to Strike shall be, and the same hereby is, Denied.

IT IS FURTHER ORDERED that the petition be granted in part, and that the Respondent submit to a medical examination by Dr. Frederick M. Miller, 4900 Cherry Creek Drive South #E, Denver, Colorado, (Phone #759-2332) on or before September 30, 1985. Respondent shall

make the appointment with Dr. Miller to permit this schedule to be met.

IT IS FURTHER REQUESTED that Dr. Miller file a written report of this medical examination with this Court on or before October 15, 1985.

BY THE COURT, EN BANC, AUGUST 29, 1985.

ENTERED AUGUST 30, 1985.

IV. OTHER MATERIALS

Provisions of U.S. Constitution

U.S. Const. Amend. 1.

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

U.S. Const. Amend. 5.

"... nor shall any person ... be

deprived of life, liberty, or property, without due process of law; ...".

U.S. Const. Amend. 6.

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, ...".

U.S. Const. Amend. 7

"In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law."

U.S. Const. Amend. 14, Section 1

" ... nor shall any State deprive any person of life, liberty, or property,

without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.****".

Federal Privacy Act of 1974 5 U.S.C. 552 et. seq.

5 U.S.C. 552(a)

"Public information; agency rules, opinions, orders, records, and proceedings. (a) Each agency shall make available to the public information as follows: [provisions follow which do not apply to Petitioner's letters and statements]****".

5 U.S.C. 552(b)(7)(B) and (b)(7)(C)

"Public information; agency rules, opinions, orders, records, and proceedings.*** (b) This section does not apply to matters that are-- *** (7) investigatory records compiled for law enforcement purposes, but only to the extent that the production of such records would (B) deprive a person of a right to a fair

trial or an impartial adjudication, (C) conscitute an unwarranted invasion of personal privacy, ****".

5 U.S.C. 552a(b)

"Records maintained on individuals*** (b) Conditions of disclosure. - No agency shall disclose any record which is contained in a system of records by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains, unless disclosure of the record would be-- *** [exceptions which do not apply]."

Federal Civil Rights Statute 42 U.S.C. 1983

42 U.S.C. 1983

"Civil action for deprivation of rights. Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Terri-

tory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia."

Provisions of the Colorado Constitution

Colorado Const. Art. II, Section 4

"Religious freedom. The free exercise and enjoyment of religious profession and worship, without discrimination, shall forever hereafter be guaranteed; and no person shall be denied any civil or political right, privilege or capa-

city, on account of his opinions concerning religion; but the liberty of conscience hereby secured shall not be construed to dispense with oaths or affirmations, excuse acts of licentiousness or justify practices inconsistent with the good order, peace or safety of the state. No person shall be required to attend or support any ministry or place of worship, religious sect or denomination against his consent. Nor shall any preference be given by law to any religious denomination or mode of worship."

Colorado Const. Art. II, Section 10

"Freedom of speech and press. No law shall be passed impairing the freedom of speech; every person shall be free to speak, write or publish whatever he will on any subject, being responsible for all abuse of that liberty; and in all suits and prosecutions for libel the truth

thereof may be given in evidence, and the jury, under the direction of the court, shall determine the law and the fact."

Colorado Const. Art. II Section 23

"Trial by jury - grand jury. The right of trial by jury shall remain inviolate in criminal cases; but a jury in civil cases in all courts, or in criminal cases in courts not of record, may consist of less than twelve persons, as may be prescribed by law. Hereafter a grand jury shall consist of twelve persons, any nine of whom concurring may find an indictment; provided, the general assembly may change, regulate or abolish the grand jury system; and provided, further, the right of any person to serve on any jury shall not be denied or abridged on account of sex, and the general assembly may provide by law for the exemption from jury service of persons or classes of persons."

Colorado Const. Art. II, Section 24

"Right to assemble and petition. The people have the right peaceably to assemble for the common good, and to apply to those invested with the powers of government for redress of grievances, by petition or remonstrance."

Colorado Const. Art. II, Section 25

"Due process of law. No person shall be deprived of life, liberty or property, without due process of law."

Colorado Revised Statutes

C.R.S. 13-25-127(1)

"Civil actions - degree of proof required. (1) Any provision of the law to the contrary notwithstanding and except as provided in subsections (2) and (3) of this section, the burden of proof in any civil action shall be by a preponderance of the evidence. The provisions of this subsection (1) shall not apply to the burden of proof required in determining

the validity of any legislative enactment.****".

C.R.S. 13-70-102(1)

"Number of jurors. (1) The jury shall consist of six persons, unless the parties agree to a smaller number, not less than three.****".

Colorado Rules of Civil Procedure

C.R.C.P. 38 (a) and (b)

"Jury Trial of Right. (a) Where Jury Right Exists. Upon demand, in actions for the recovery of specific real or personal property, with or without damages or for money claimed as due on contract, or as damages for breach of contract, or for injuries to person or property, an issue of fact must be tried by a jury. However, after demand a jury trial may be waived by stipulation of the parties.

(b) Demand. Any party may demand a trial by jury of any issue triable by a jury by serving upon the other parties a

demand therefor in writing at any time after the commencement of the action and not later than ten days after the service of the last pleading directed to such issue. Such demand may be endorsed upon a pleading of the party.****".

C.R.C.P. 121, Section 1-15

"Determination of Motions. 1. All motions involving contested issues of law shall be supported by a recitation of legal authority either incorporated into the motion or set forth in a separate memorandum brief.****".

C.R.C.P. 241.1

"Discipline and Disability: Policy - Jurisdiction. (a) Statement of Policy. All members of the Bar of Colorado, having taken an oath to support the Constitution and laws of this state and of the United States, are charged with obedience to those laws at all times. As officers of the Supreme Court of Colo-

rado, lawyers must observe the highest standards of professional conduct. A license to practice law is a proclamation by this Court that its holder is a person to whom members of the public may entrust their legal affairs with confidence that the lawyer will be true to that trust, that he will hold inviolate the confidences of his client, and that he will competently fulfill the responsibilities owed to his client and to the courts.

In order to maintain the highest standards of professional conduct, lawyers who have demonstrated that they are unable, or are likely to be unable, to discharge their professional responsibilities shall be subject to appropriate disciplinary or disability proceedings.

(b) Jurisdiction. Every lawyer licensed to practice law in the State of Colorado is subject to the disciplinary and disability jurisdiction of the

Supreme Court in all matters relating to the practice of law. Every lawyer specially admitted to practice law in this state pursuant to C.R.C.P. 221 or C.R.C.P. 221.1 is subject to the disciplinary and disability jurisdiction of the Supreme Court for conduct related to that proceeding."

C.R.C.P. 241.2(a)

"Grievance Committee. Grievance Committee. The Grievance Committee of the Supreme Court of the State of Colorado (hereinafter Committee) is hereby established. The Committee shall serve as a permanent committee of the Supreme Court.****".

C.R.C.P. 241.3(a)

"Committee Counsel. (a) Committee Counsel. The Committee shall appoint a Committee Counsel, subject to the approval of the Supreme Court.

The Committee Counsel shall serve at

the pleasure of the Committee and of the Supreme Court.****".

C.R.C.P. 241.3(c)(5)

"Committee Counsel *** (c) Powers and Duties of the Committee Counsel. The Committee Counsel shall: ***

(5) In cooperation with the Disciplinary Prosecutor, prepare and forward matters to the Committee for the commencement of disciplinary or disability proceedings; and ****".

C.R.C.P. 241.4(a)

"Disciplinary Prosecutor. (a) Disciplinary Prosecutor. The Supreme Court shall appoint a Disciplinary Prosecutor. The Disciplinary Prosecutor shall serve at the pleasure of the Supreme Court.****".

C.R.C.P. 241.4(c)(3)

"Disciplinary Prosecutor *** (c) Powers and Duties. The Disciplinary Prosecutor shall: ***

(3) Prepare and prosecute disciplinary and disability actions against lawyers as provided by these Rules; ****.

C.R.C.P. 241.14(d)

"Hearings Before the Hearing Board *** (d) Procedure and Proof. Hearings shall be conducted in conformity with the Colorado Rules of Civil Procedure, the Colorado Rules of Evidence, and the practice in this state in the trial of civil cases; provided, however, that proof shall be by clear and convincing evidence, and provided further that the respondent may not be required to testify or to produce records over his objection if to do so would be in violation of his constitutional privilege against self-incrimination.

In the course of proceedings conducted pursuant to this Rule, the Chairman, the Vice-Chairman, and the presiding officer of the hearing board, acting

pursuant to and in conformity with these Rules, shall have the power to administer oaths and affirmations.

A complete record shall be made of all depositions and of all testimony taken at hearings before a hearing board.****".

C.R.C.P. 241.19

"Disability Inactive Status. (a) Disability Inactive Status. Where it is shown that a lawyer is unable to fulfill his professional responsibilities competently because of mental or emotional infirmity or illness, including addiction to drugs or intoxicants, the lawyer shall be transferred to disability inactive status. During such time as a lawyer is on disability inactive status he shall not engage in the practice of law.

All proceedings conducted pursuant to these Rules pending against a lawyer at the time he is transferred to disability

inactive status shall be deferred until such time as the lawyer is found to be eligible for reinstatement as provided by C.R.C.P. 241.23. Proceedings instituted against a lawyer pursuant to this Rule are disability proceedings. Transfer to disability inactive status is not a form of discipline and does not involve a violation of the lawyer's oath.

(b) Transfer to Disability Inactive Status Without a Hearing. Where a lawyer who is subject to these Rules has been judicially declared mentally ill, or has been involuntarily committed to a mental hospital, or has voluntarily petitioned for the appointment of a guardian, or has been found not guilty by reason of insanity in a criminal proceeding in a court of record, the Supreme Court, upon proper proof of the fact, shall enter an order transferring the lawyer to disability inactive status. Such order shall remain

in effect until altered by the Supreme Court. A copy of the order transferring a lawyer to disability inactive status shall be served upon the lawyer and upon either his guardian or the superintendent of the hospital in which he is confined. Service shall be made in such manner as the Supreme Court may direct.

(c) Transfer to Disability Inactive Status Following a Hearing. Whenever any interested party shall petition the Supreme Court to determine whether a lawyer is incapable of continuing to practice law by reason of mental or emotional infirmity or illness, including addiction to drugs or intoxicants, or where the Supreme Court is informed that the lawyer in a proceeding conducted pursuant to these Rules is so incapacitated as to be unable to defend himself, the Supreme Court shall direct such action as it deems necessary or proper to

determine whether the lawyer is incapacitated, including an examination of the lawyer by qualified medical experts designated by the Supreme Court; provided, however, that before any medical examination or other action may be ordered the Supreme Court must afford the lawyer against whom disability proceedings are pending an opportunity to show cause why such examination or action should not be ordered. If, upon due consideration of the matter, the Supreme Court determines that the lawyer is incapable of continuing to practice law it shall enter an order transferring him to disability inactive status. Such order shall remain in effect until altered by the Supreme Court.

A lawyer against whom disability proceedings are pending shall be given notice of such proceedings. Notice shall be given in such a manner as the Supreme

Court may direct. The Supreme Court may appoint counsel to represent the lawyer if he is without adequate representation.

(d) Procedure When Lawyer Alleges Disability During Course of Proceedings. If in the course of proceedings conducted pursuant to these Rules the lawyer alleges disability by reason of mental or emotional infirmity or illness, including addiction to drugs or intoxicants, which impairs his ability to defend himself adequately in such proceedings or which impairs his ability to practice law, the Supreme Court shall enter an order transferring the lawyer to disability inactive status. Thereafter, the Supreme Court shall order a medical examination of the lawyer. Upon review of the report of the medical examination, the Supreme Court may either:

(1) Continue the order transferring the lawyer to disability inactive status;

or

(2) Enter any other appropriate order, including an order directing further examination of the lawyer, and defer the proceedings pending against the lawyer; or

(3) Discharge the order transferring the lawyer to disability inactive status and order that the proceedings pending against the lawyer be resumed. In no event shall the lawyer be reinstated to practice law pending the final disposition of the proceedings commenced pursuant to these Rules.

(e) Burden of Proof. In a disability proceeding seeking the transfer of a lawyer to disability inactive status the party petitioning for transfer shall bear the burden of proof by clear and convincing evidence.

(f) Hearing Before the Supreme Court. All hearings required by this

Rule may be delegated by the Supreme Court to the Committee for proceedings identical to those provided for by C.R.C.P. 241.14 and C.R.C.P. 241.15. At the conclusion of any such delegated proceedings, the hearing panel shall submit to the Supreme Court a report and recommendation.

(g) Compensation. The Supreme Court may fix the compensation to be paid to any legal counsel or medical expert appointed by the Supreme Court pursuant to this Rule. The Supreme Court may direct that such compensation be assessed as part of the costs of a proceeding held pursuant to this Rule and that it be paid as such in accordance with law."

C.R.C.P. 241.20(a)

"Proceedings Before the Supreme Court (a) Caption. Except as otherwise provided in C.R.C.P. 241.11(1), C.R.C.P. 241.11(2), and C.R.C.P. 241.15(b)(1), all

disciplinary and disability proceedings filed in the Supreme Court as herein provided shall be conducted in the name of the People of the State of Colorado and shall be prosecuted by the Disciplinary Prosecutor.

In those cases where the hearing panel recommends discipline of the respondent by the Supreme Court or the transfer of the lawyer to disability inactive status, the Committee Counsel shall promptly file with the Clerk of the Supreme Court the hearing panel's report and recommendation, together with the complaint and answer. Thereupon, the matter shall be docketed by the Clerk as:

SUPREME COURT, STATE OF COLORADO

Case No.

ORIGINAL PROCEEDING IN DISCIPLINE

THE PEOPLE OF THE STATE OF COLORADO,

Complainant,

vs.

_____.

Respondent._____

****".

C.R.C.P. 241.25(d)(3)

"General Provisions.***(3) "Disability Proceedings. The Supreme Court, in its discretion, may order the lawyer to bear the cost of all or any part of the disability proceedings, including the cost of any examinations ordered by the Court.****".

Colorado Rules of Criminal Procedure

C.R.Cr.P. 23(a)(1) and (2)

"Trial by Jury or by the Court (a) Trial by Jury.

(1) Every person accused of a felony or a class 1 misdemeanor has the right to be tried by a jury of twelve.

(2) In matters involving misdemeanors other than class 1 misdemeanor, the accused is entitled to be tried by a jury of six.***

(8) All jury verdicts must be unanimous."

Statement of Facts - Federal Questions Raised

The abbreviations below, which are used to cite to the place in the Record where the quotations (from the record which demonstrate Petitioner raised the federal questions sought to be reviewed) are found, pertain to the following pleadings, Motions and other documents filed by Petitioner:

1. Motion to Strike (Special Appearance), dated June 3, 1985. M/Strike.

2. Motion For Further Enlargement of Time (Motion to Strike), dated June 28, 1985 [with legal argument as permitted by C.R.C.P. 121, Section 1-15]. M/FEnlarge.

3. Brief In Support of Motion to Strike, dated July 16, 1985. Brief/ M/Strike.

4. Answer, dated August 26, 1985.

Answer.

5. Third Motion to Strike, dated August 26, 1985. 3M/Strike.

6. Motion to Dismiss For Failure to State A Claim, dated August 26, 1985. M/Dismiss.

7. Brief In Support of Motion to Dismiss For Failure to State A Claim, dated August 26, 1985. Brief/M/Dismiss.

Note: Within the quotations the parties here are referred to as they were captioned in the State Court proceeding. In parenthetical comments contained within brackets and citations the parties here are referred to as they are captioned in the herein Petition.

Questions 1, 2 and 3 (Free Exercise, Establishment, Speech and Petition)

1. "The pure exercise of religion, speech and petition, without more, is not subject to the jurisdiction of any court****". M/Strike at 2, para. 1.

2. "Complainant has not responded to or cited any legal authority opposing Respondent's assertion of the fundamental rights contained in the First Amendment Freedoms." M/FEnlarge at 3, para. 4.

3. "TABLE OF CONTENTS ...

INTRODUCTION ... FREE EXERCISE CLAUSE ... I. The allegations only describe protected expressions of religious beliefs and opinions ... II. The allegations do not describe unprotected advocacy, unprotected overt acts or other unprotected expressions of religious beliefs and opinions ... III. The allegations are vague and conclusory ... IV. The Free Exercise Clause protects expressions of religious beliefs and opinions by nonconforming individuals as well as such expressions by members of orthodox denominations ... V. The allegations are highly prejudicial to Respondent ... ESTABLISHMENT CLAUSE ... VI. The Colorado

statutory framework, as written, interpreted, or applied impermissibly advances conforming religious beliefs and opinions and inhibits non-conforming religious beliefs and opinions such as Respondent's ... FREE SPEECH CLAUSE ... VII. The allegations do not describe unprotected advocacy, unprotected overt acts or other unprotected speech ... IMMATERIALITY AND REDUNDANCY OF TRAVELOGUE ... VIII. The allegations of the "Travelogue" consists of hearsay ... IX. The allegations of the "Travelogue" are redundant ... X. The allegations of the Travelogue" are highly prejudicial to Respondent ... FUTILITY OF COERCION ... XI. The Petition and this Alleged Proceeding are self-defeating because they invite civil disobedience". Brief/M/Strike at 2. [page numbers deleted].

4. "The Petition is patently, and on its face, frivolous, groundless and

unconstitutional as being grossly and unabashedly violative of the fundamental and clearly defined Freedoms of Religion, Speech and Petition contained in the First Amendment...". Answer at 3, 5th Defense.

5. "Such expressions of religious and political beliefs and opinions are protected by the First Amendment Freedoms." M/Strike at 5, para. 7.

6. "Respondent has shown cause ... demonstrating to the Court that the action at Bar is based on mere written and verbal statements of Respondent's religious and political beliefs which are protected ... 'Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of griev-

ances';" M/Dismiss at 1-2, para. 2.

7. "This was so even though the above cases, unlike this action, did not involve issues of First Amendment Freedoms. Even the Supreme Court of Colorado has to obey the law of the land." Brief/M/Dismiss at 3.

Question 4 (Right to Privacy)

8. "The Court may not require Respondent to subject himself to violation of ... and to the invasion of the more recent freedom of privacy which an examination of his mental state entails on the pretext that such requirement is no more than merely asking 'questions'." M/FEnlarge at 9, para. 16.

9. "Religious beliefs and opinions are not capable of adjudication. Legal proceedings which attempt to ground a cause of action on expressions of religious beliefs and opinions ... invariably require an examination of

those beliefs and opinions. The First Amendment Freedoms prohibit such an examination." Brief/M/Strike at 4 [Emphasis in original].

10. "...Complainant makes further false allegations - characterizing Complainant's attempt to force Respondent to undergo an examination of his mental state and/or suspending Respondent's license to practice law as de minimus. Respondent is not a movie star for whom psychoanalysis or other form of psychological examination is a faddish thrill to be indulged in as often as possible." 3M/Strike at 11, para. 16.

11. "No Court in the land has the right or jurisdiction to restrict the liberty of any person by requiring a person to submit to an examination of that person's mental state because of that person's written and/or verbal expressions of religious and/or political

beliefs and opinions." M/Dismiss at 5, para. 6.

12. "The opinions cited above [U.S. Supreme Court opinions as a matter of Constitutional law and state court cases as matter of common law] contain the express acknowledgement that a person's religion is not the business of anyone else...". Brief/M/Dismiss at 9.

Question 5 (Procedural and Substantive Due Process)

13. [5(a)]. "The entire statutory framework ... is generally overbroad and as specifically applied to Respondent violates the Due Process Clause...". M/Strike at 3-4, para. 3.

14. [5(b)]. "The Due Process Clause ... C.R.C.P. 12(f) ... both combined with C.R.C.P. 241.19(e), require that each separate concept contained in the Petition must be proved by clear and convincing evidence ... This is in addition to

the burden of proof that Complainant bears to prove his case in chief and in general by clear and convincing evidence" M/Strike at 11, para. 8(b). [Emphasis in original].

15. [5(c)]. "The rambling narrative of the Petition ... appears only to allude to and gives the impression that Respondent has done "something sinister" or "something insane," according to the minds of Committee Counsel ... without stating what that 'something sinister' or 'something insane' is. The names of supposedly 'impressive' and 'responsible' persons appear in the Petition, including the mysterious and dreaded SECRET SERVICE, the identity of whose agent or agents for reasons 'which unfortunately remain unseen' [ironically quoting an excerpt from Respondent's "Petition"] must be kept a mystery. Respondent's response in layman's terms, to the Peti-

tion under these grounds in this Motion is: 'So What?'." M/Strike at 7-8, para. 5(d).

16. [5(d)]. Same excerpt as [5(a)], above. M/Strike at 3-4, para. 3.

17. [5(e)]. Same excerpt as [5(c)], above. M/Strike at 7-8, para. 5(d).

18. [5(f)]. "[It] is apparent on the face of the Petition that [the allegations] ... create the mere impression that Respondent is 'suffering from some degree of mental impairment'." M/Strike at 8, para. 5(e).

19. [5(f)]. Also, same excerpt as [5(c)], above. M/Strike at 7-8, para. 5(d).

20. [5(a)]. "The First Amendment Freedoms prohibit the expression of religious and political beliefs, without more, from being the grounds for any type of legal proceeding and from being evidence in any type of legal proceed-

ing." M/FEnlarge at 5, para. 10.

21. [5(b)]. "C.R.C.P. 241.19(e) clearly states Complainant's Burden of Proof. The Rules cited by Complainant, namely C.R.C.P. 241.19(a) and (c) are not the operative provisions of the Rules with respect to the Burden of Proof...". M/FEnlarge at 17-18, para. 24.

22. [5(c)]. "[The] grounds that need to be shown to the [State] Court prior to the initiation of any such proceeding are probable cause, at the very least. Complainant has not alleged grounds which meet that standard." M/FEnlarge at 18-19, para. 24.

23. [5(d)]. "Respondent is unable to determine if the fourth sentence or last citation of paragraph 3 of the Response is an argument of law, an allegation of fact or a veiled threat of disciplinary action." M/FEnlarge at 8, para. 15.

24. [5(e)]. "The Travelogue [a term

used by Petitioner to describe certain portions of Respondent's "Petition"] consists entirely of hearsay...". M/FEnlarge at 5, para. 10.

25. [5(f)]. "Respondent objects to Complainant's practice of citing, as legal authority for his contention, cases which bear only a fleeting resemblance to the facts or law in the Alleged Proceeding. Such practice is prejudicial to Respondent, misleading to the Court and highly improper." M/FEnlarge at 3, para. 5 [Emphasis in original].

26. [5(f)]. Also, the same excerpt as 5(d), above. M/FEnlarge at 8, para. 15.

27. [5(g)]. "The Order and the Rule to Show Cause (which Respondent reiterates was void as process) merely required Respondent to answer in writing and show cause. Respondent did so in due time in Motions filed and reviewed by the [State]

Court, challenging Complainant's Petition, the Order, the Rule to Show Cause, and the entire statutory framework as being deficient as a matter of law on Constitutional and procedural grounds, owing to defective allegations, process, service of process, among other things." M/FEnlarge at 17, para. 23.

28. [5(a)]. To the best of Petitioner's knowledge "all applicable case law in the entire country on the issue of a person's mental state unanimously supports the principle of law that a person's belief in religion (also called the 'supernatural' and more quaintly 'spiritualism') does not constitute incompetency of any kind." M/Dismiss at 3, para. 1(h).

29. [5(b)]. "Pursuant to the Court's own Rule C.R.C.P. 241.19(e) the Burden of Proof is on Complainant [Respondent here] not on Respondent [Petitioner here]."

M/Dismiss at 3, para. 3.

30. [5(c)]. "Complainant has alleged no facts which support any cause of action. Respondent has demonstrated the fact that Constitutional and case law supports Respondent's defenses." M/Dismiss at 3, para. 3.

31. [5(c)]. "There being no factual grounds for this action and Respondent's religious beliefs and opinions not being subject to any examination by a 'qualified medical expert' or subject to adjudication in any Court of the land Respondent is at a loss to know what 'cause' he could 'show' other than what he has already shown." M/Dismiss at 5, para. 7.

32. [5(e)]. "Complainant's most recent 'theory' [raised by Respondent (i.e. Complainant below) for the first time two months after its commencement of the "disability proceeding" in "Complain-

ant's Response to Respondent's Brief In Support of Motion to Strike and to Respondent's Second Motion to Strike," undated but containing a "Certificate of Mailing" dated August 1, 1984 [sic]. This document was supposedly in "response" to Petitioner's earlier Motions] is that Respondent made a 'threat' against the President of the United States ... Prosecution of such an alleged 'threat' is not within the jurisdiction of Committee Counsel, Complainant or even this Court. There are no allegations that the United States Secret Service or the United States Justice Department are even concerned that a 'threat' was made ... only that certain agents conducted interviews with various people, including Respondent. If the U.S. Secret Service does not believe a 'threat' has been made, then what business is it of Committee Counsel,

Complainant or this Court?" M/Dismiss at 3-4, para. 4.

33. [5(f)]. Same excerpt as 5(e), above. M/Dismiss at 3-4, para. 4.

34. [5(a)]. "One never [to the best knowledge of Petitioner] finds a case wherein a court suspends or disbars an attorney for mental infirmity alone." Brief/M/Dismiss at 2.

35. [5(a)]. "Those courts realized that those who are religious -- no matter how reasonable, logical and methodical their methods of reasoning may be -- cannot be expected to prove the existence of certain supernatural phenomena and therefore, for this reason, should not be called to task in any way [simply] because such phenomena cannot be proven by human means alone." Brief/M/Dismiss at 9.

36. [5(b)]. Complainant must prove "by evidence beyond a reasonable doubt

and/or clear and convincing evidence to have committed an act of omission or misconduct in the representation of a client coupled with clearly-defined mental illness ... such is not the case in the case of Respondent and such has not even been alleged by Complainant." Brief/M/Dismiss at 2.

37. [5(c)]. "Complainant, and Committee Counsel, it seems, seem determined to charge Respondent with the fantastical, elementless crime -- to be decided without a jury as is required by the Constitution of the United States -- of 'threatening' the President or what-not on the grounds that the orange trees froze in Florida, while at the same time desperately attempting to obtain an examination of Respondent's mental state so as to provide some facts upon which to base this fantastical, elementless crime...". Brief/M/Dismiss at 12.

38. [5(d)]. Before courts penalize an attorney for incompetency due to mental disability there "is always incompetency plus well-defined mental illness." Brief/M/Dismiss at 3.

39. [5(f)]. Same excerpt as 5(c), above. Brief/M/Dismiss at 12.

Question 6 (Reversal of Burden of Proof)

40. Same as paragraph -- [5(b)] above. M/Strike at 11, para. 8(b).

41. "Respondent objects to Complainant's practice of citing, as legal authority for his contentions, cases which bear only a fleeting resemblance to the facts or law in this Alleged Proceeding. Such practice is prejudicial to Respondent, misleading to the Court and highly improper." M/FEnlarge at 3, para. 5.

42. "C.R.C.P. 241.19(e) clearly states Complainant's Burden of Proof. The rules cited by Complainant, namely

C.R.C.P. 241.19(a) and (c) are not the operative provisions of the Rules with respect to the Burden of Proof...". M/FEnlarge at 17-18, para. 24.

43. "[Because] C.R.C.P. 241.19(e) requires that Complainant satisfy a Burden of Proof which is the civil equivalent of the Burden of Proof in a criminal case; and because Committee Counsel, beyond any doubt, performs an office with regard to enforcement of Disciplinary Rules, identical to the role a District Attorney performs with regard to enforcement of criminal law, and because Committee Counsel has comported himself and does comport himself like a prosecuting attorney, the grounds that need to be shown to the Court prior to the initiation of any such proceeding are probable cause, at the very least." M/FEnlarge at 18-19, para. 24.

44. "(Initial and Subsequent Burdens

Not Met) ... there must be clear and convincing evidence." Answer at 6-7, 14th Defense.

45. "It is impossible for Complainant to meet its Burden of Proof...". Answer at 7, 15th Defense.

46. "...Complainant in all of his five versions continues to ignore the fact that it is not merely mental illness that Complainant must prove by clear and convincing evidence but also Complainant must prove that such mental illness impairs the attorney's competency to practice law." 3M/Strike at 15, para. 20.

47. "Pursuant to the Court's own Rule C.R.C.P. 241.19(e) the Burden of Proof is on Complainant not on Respondent." M/Dismiss at 3, para. 3.

48. Same excerpt as paragraph 36, above. Brief/M/Dismiss at 2.

49. Same excerpt as paragraph 37,

above. Brief/M/Dismiss at 12.

Question 7 ("One Man Inquisition")

50. "While there is provision for notice and a 'hearing' in the form principally of the examination by a 'medical expert,' such hearing is not really a hearing within the meaning of the Due Process Clause...". M/Strike at 3, para. 2.

51. "The purpose of this Alleged Proceeding is not to ask Respondent that particular question or to merely 'ask questions' on any subject. Rather the purpose is to subject Respondent to a far-reaching examination of his mental state, to probe the thoughts in his mind." M/FEnlarge at 7, para. 13.

52. "Nor should Committee Counsel be permitted to use such improperly initiated proceeding as a justification to go on a 'fishing trip' to uncover facts that might justify a proper proceeding."

M/FEnlarge at 16-17 para. 21.

53. "There being no facts alleged independent of Respondent's expressions of religious beliefs and opinions, an examination of Respondent would necessarily involve an examination only of Respondent's expressions of religious beliefs, either of themselves, or in relation to other events in Respondent's life. Both a 'qualified medical expert' examining Respondent and any trier of fact would face an analysis of secular and religious facts inextricably intertwined. Therefore, it fails the third of the three Lemon tests." Brief/M/Strike at 24.

54. "The Colorado Supreme Court, not being an Ecclesiastical Court, has neither jurisdiction over the person nor jurisdiction over the subject matter...". Answer at 2, 2nd Defense.

55. "...[The] Colorado Supreme Court,

acting as a Star-Chamber in this Alleged Proceeding, has neither jurisdiction over the person or jurisdiction over the subject matter...". Answer at 2, 3rd Defense.

56. "Respondent demands a trial by jury of twelve ordinary citizens ... [citing to] Vitek v. Jones, 445 U.S. 480 (1980) ... [and citing to] C.R.C.P. 38 [which provides for a trial by jury in civil actions]. Petitioner's "Demand For Jury Trial," dated August 26, 1985.

57. "It is common knowledge in the legal profession that prosecuting attorneys can always obtain a 'qualified medical expert' in the field of psychology who is willing to support the prosecution's case. Because of the Constitutional questions involved in this action, particularly the issue of religion, this circumstance makes the unfairness and injustice of such an examination

a foregone conclusion in violation of Respondent's Constitutional Rights." M/Dismiss at 5-6, para. 10.

58. "It is immaterial whether the inquisator is the Court itself, a hearing board or a 'qualified medical expert'; none of those can inquire into Respondent's religious activity, views or beliefs." Brief/M/Dismiss at 5.

Question 8 (Equal Protection Clause)

59. "[The] message said procedural and substantive framework sends to attorneys is this: 'if a person says he is God and/or criticizes politicians or others he will be accused of having a 'mental infirmity' and will have his license to practice law revoked." M/Strike at 3, para. 2.

60. "Respondent is unable to determine if the fourth sentence or last citation of paragraph 3 of the Response is an argument of law, an allegation of

fact or a veiled threat of disciplinary action. If it is a threat of disciplinary action then Respondent claims surprise and objects because the statement appears to have been made to punish Respondent for contesting the Petition." M/FEnlarge at 8, para. 15.

61. "And, because it [the statutory framework as written, interpreted and applied] is being used as a governmental instrumentality to separate the bad religions (Respondent's) from the good religions ('Bishop' Mote's, among others) it also violates the Establishment Clause. 'Bishop' Mote is certainly treated deferentially in the Petition, his name, title and name of church set forth in full even though the name of the church also appears in the exhibit. Respondent, on the other hand, is referred to in a patronizing manner in many places in Complainant's pleadings."

Brief/M/Strike at 20.

62. The State Action is "...a blatant, patent and outrageous act of religious persecution and political vendetta ... in violation of fundamental freedoms and rights contained in the same constitutional provisions described elsewhere in the Answer." Answer at 6, 10th Defense.

63. "President Reagan and other political and religious leaders ... receive ... thousands of letters ... which are no different from Respondent's communications to the President...". Answer at 9, 19th Defense.

64. "...[There] are hundreds of attorneys ... who hold religious beliefs that to a great many people are controversial and unbelievable...". Answer at 9, 20th Defense.

65. "Complainant will respond to this fact by saying other attorneys are not on

trial. That might be persuasive except for the Establishment Clause and the Equal Protection Clause of Section 1 of Article IV [sic] of the Constitution of the United States of America. Respondent is being singled out for reasons which are obvious." 3M/Strike at 14, para. 19.

66. "[This] circumstance makes the unfairness and injustice of such an examination a foregone conclusion in violation of Respondent's Constitutional Rights." M/Dismiss at 6, para. 10.

Certificate of Mailing

I, Michael Brauer, member of the Bar of the Supreme Court of the United States, hereby certify that I mailed the appropriate number of copies, as described below, of the foregoing Petition For Writ of Certiorari with Appendix by depositing said copies in a United States post office or mailbox, with first-class postage prepaid, properly addressed to the Clerk, Supreme Court of the United States, and to the counsel of record in the proceeding below for the captioned Respondent in said Petition, the State of Colorado, as set forth below, on this 7th day of February, 1986. Said Petition is timely filed within the 90 day time limit required by 28 U.S.C. Sec. 2101(c). R.Sup.Ct. 20.2.

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Denver, Colorado 80202

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State Services Building
1525 Sherman Street - 3rd Floor
Denver, Colorado 80203

Signed,

(SIGNED)
Michael Brauer
Member of the Bar of the
Supreme Court of the United
States

ACKNOWLEDGMENT

State of Colorado)
) s.s.
County of Arapahoe)

On this 7th day of February, A.D. 1986, before me, a Notary Public in and for said County and State, personally appeared Michael Brauer, the signer of the above CERTIFICATE OF MAILING, who duly acknowledged to me that he executed the same. WITNESS my hand and official seal the day and year first above written.

My Commission expires:

_____

_____
(SIGNED)

Notary Public

_____

_____
Address